IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2006

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.46838 of 2002

N.Yasothai ... Petitioner

Vs.

1. The General Manager,
   Thermal Station II / Construction,
   NLC, Neyveli - 7.

2. The Chief Manager (Personnel),
   Thermal Power Station II,
   NLC Ltd., Neyveli 607 807.

3. The Special Officer,
   NLC Indco Serve,
   The Neyveli Lignite Corporation
   Industrial Co-op Serving Society Ltd.,
   Neyveli 607 807. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.S.Sathiachandran

For respondents : Mr.N.A.K.Sarma for R1 and R2
Mr.P.John for
M/s.T.S.Gopalan & Co for R3

O R D E R

The Writ Petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the entire records connected with the impugned order, dated 13.11.2002, passed by the third respondent and to quash the same and to direct the respondents to continue to engage the petitioner as an unskilled labour till her superannuation on the basis of her date of birth 20.12.1954.

The brief facts of the case, as stated by the petitioner, are as follows:

2. It is stated that the petitioner was working as a Contract Labour in the Neyveli Lignite Corporation (herein after referred to

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as the N.L.C.) from the year 1982 to 1990. Subsequently, she was appointed as an unskilled labour in N.L.C. Indco Serve, IND No.1812, Neyveli - 7 on and from 1.10.1990. She has been continuously working as such till the date of the filing of the writ petition. On 12.12.1999, an interview was conducted by the N.L.C. P & A Department for all the workers including the petitioner to absorb them in the N.L.C.

3. The petitioner was called for a Medical Examination and she was also required to produce her birth certificate. During the Medical Examination, held on 15.12.1999, the petitioner had stated that her date of birth was 20.12.1954. However, she could secure her birth certificate from the Sub-Registrar of Births and Deaths, Kammapuram, where she was born, only in the month of January, 2000. In the month of November, 2002, she was informed that she would be superannuated, on 31.12.2002, as she was completing 58 years of age. Therefore, on 8.11.2002, she had made a representation to the first and second respondents stating her actual date of birth and requesting that she should be permitted to continue in service accordingly. The Tahsildar, Virudhachalam, after a due enquiry, had issued proceedings in Na.Ka.No.A4/8726/2002, dated 29.11.2002, ordering incorporation of the petitioner's name in the birth certificate and had issued a fresh birth certificate stating that the petitioner's date of birth was 20.12.1954. Meanwhile, by an order, dated 13.11.2002, the third respondent had informed the first respondent that a list of 10 workers, including the petitioner, who were completing 58 years of age, as on 31.12.2002, as per the age assessment carried out by the General Superintendent/Medical, N.L.C., need not be engaged for work, after 31.12.2002 A.N. It was taken on file by the second respondent as CM(P) TPS-II, No.583, dated 20.11.2002.

4. It has been further stated by the petitioner that as per the birth certificate issued by the Sub-Registrar of Births and Deaths, Kammapuram, Cuddalore District, her actual age, as on 31.12.2002, was 48 years and 11 days. On 25.11.2002, she had made a representation to the first and second respondents enclosing her birth certificate and requesting them to re-consider the decision to superannuate the petitioner, from 31.12.2002. However, the respondents had not considered the petitioner's representation and had decided to sustain the office order, dated 13.11.2002. Therefore, the petitioner has preferred the present writ petition.

5. In the counter-affidavit filed on behalf of the third respondent, it is stated that the third respondent Society is not a 'State' under Article 12 of the Constitution of India. Therefore, the writ petition would not be maintainable. The learned counsel appearing for the third respondent had further stated that the employment/non-employment issue relating to the petitioner could be

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decided only by the labour Court, as provided under the Industrial Disputes Act, 1947. Further, the petitioner had not produced any authenticated birth certificate to prove her date of birth to be 20.12.1954 and there are discrepancies in the documents submitted by the petitioner with regard to her age. Further, the medical evidence available is also contrary to what has been claimed by the petitioner.

6. In such circumstances, the writ petition is liable to be dismissed as not maintainable.

7. However, the learned counsel appearing for the petitioner, at this stage of the hearing, had submitted that it would suffice if there is an order from this Court directing the second respondent to dispose of the petitioner's representation, dated 25.11.2002, which is said to be still pending on the file of the second respondent.

8. On such submission being made, the petitioner is directed to forward a fresh copy of the representation, dated 25.11.2002, to the second respondent, within 10 days from today and the second respondent is directed to dispose of the representation of the petitioner, dated 25.11.2002, and pass appropriate orders, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The General Manager,
   Thermal Station II / Construction,
   NLC, Neyveli - 7.

2. The Chief Manager (Personnel),
   Thermal Power Station II,
   NLC Ltd.,
   Neyveli 607 807.

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3. The Special Officer,
   NLC Indco Serve,
   The Neyveli Lignite Corporation
     Industrial Co-op Serving Society Ltd.,
   Neyveli 607 807.

ONE CC TO MR.S. SATHIA CHANDRAN, ADVOCATE SR 56985

ONE CC TO MR.N.A.K. SARMA, ADVOCATE SR 56989

ONE CC TO MR.T.S. GOPALAN & CO, ADVOCATE SR 56680

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